IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 296 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SRILAL MANUBHAI - Appellant(s)
Versus
BADANIA SAJJANLAL GULABJI & 1 - Defendant(s)

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Appearance :
MR MD PANDYA for Appellant(s) : 1,
None for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 04/08/2006

ORAL JUDGMENT

1. The present appeal has been filed by the appellant – original plaintiff (hereinafter referred to as “the plaintiff”) challenging the judgment and decree passed by the learned City Civil Court, Ahmedabad, dated 29th

December, 1982 passed in Civil Suit No. 2019 of 1980 in dismissing the said suit, in which, the plaintiff prayed for a money decree of Rs.5250/-.

2. The plaintiff, a registered partnership firm, filed Civil Suit No.2019 of 1980 claiming an amount of Rs.4860.37 ps towards the principal amount of Rs.425.30 ps as interest and in all Rs.5250/-. It was averred in the suit that it was doing business of commission agent and cloth merchant at Ahmedabad and that the defendant No.2 was the tail cloth merchant at Ghantol, District : Banswara, Rajasthan, doing business in the name and style of defendant No.1 and used to do business on credit and on the final settlement of the account, an amount of Rs.4860.37 was due and payable as per the copy of the ledger and that the defendants were called upon to pay the said amount of Rs.4860.37 ps, to which, the defendants failed, and therefore, the aforesaid suit was filed.

3. The defendant – Sajanlal Badania filed leave to defend application at Exh.11 and the same was adopted as written statement by defendant Nos.1 and 2 vide purshis Exh.17. It was submitted that all the goods sold by the

plaintiff were “subject to Banswara Jurisdiction” as per the bills given by the plaintiff and that whatever payment was made to the plaintiff, was made at village : Ghantol, District: Banswara, Rajasthan, and no cause of action has arisen in the jurisdiction of the City Civil Court, Ahmedabad, and therefore, the learned City Civil Court, Ahmedabad, has no jurisdiction. It was also further submitted that the suit was barred by limitation. The learned trial Court raised the issues at Exh.22. The plaintiff – firm examined its salesman - Shri Rajmal Ghatamalaji Kothari and on the defendants' side one Shri Sajjanmal Gulchand Badania gave evidence at Exh.60. On appreciation of evidence and considering the bills as well as the contention that “subject to Banswara jurisdiction” and other evidence, the learned trial Court held that the defendant No.1 was doing business at village Ghantol and the payments of the goods were made at village Ghantol, District: Banswara, and the defendant purchased the suit goods at Ghantol and considering the condition in the bills that “subject to Banswara jurisdiction”, the learned trial Court held that the learned City Civil Court, Ahmedabad, would not have any jurisdiction. The plaintiff relied upon the writing at

Exh.35 passed by the defendant No.2 on 29th July, 1977 in the ledger of the plaintiff on S.Y. 2033 Page-242 for the purpose of acknowledgment of the dues for the purpose of limitation. However, considering the evidence on record, the learned trial Court held that the same was by the defendant No.2 and the suit notice has not been given to the defendant No.2 and the said acknowledgment does not bare the signature of the partner of the defendant No.1 and therefore, same is not binding to the defendant No.1 and therefore, the learned trial Court held that the suit is barred by limitation.

4. On appreciation of evidence, the learned trial Court held that the defendant No.1 had no authority to acknowledge the liability by passing writing at Exh.35 dated 29th July, 1977. On considering the evidence, it appears that the goods have been purchased and the last bill was of 28th February, 1975. As stated above, the plaintiff relied upon one writing at Exh.35 passed by the defendant No.2 on 29th July, 1977 in the ledger of the plaintiff for the purpose of extension of time. However, the plaintiff failed to prove that the defendant No.2 was having any authority to acknowledge

the dues, more particularly, when the suit notice was not served upon the defendant No.2. Therefore, the learned trial Court has rightly held that the said acknowledgment was not binding to the defendant No.1 and therefore, the learned trial Court has rightly held that the suit was barred by limitation. It is required to be noted that the said finding of the learned trial Court was over and above the finding that the learned City Civil Court, Ahmedabad, has no jurisdiction.

5. So far as the jurisdiction of the City Civil Court, Ahmedabad, to try the suit in question is concerned, it is required to be noted that in the bill itself the condition was mentioned that it was “subject to Banswara jurisdiction.” On appreciation of evidence, the learned trial Court has held that the goods were sold at village Ghantol, District : Banswara, and the payments were also made at Banswara and no cause of action and/or even part of cause of action has arisen at Ahmedabad. Considering the same, it is rightly held that the learned City Civil Court, Ahmedabad, would not have any jurisdiction. In view of the above, considering the aforesaid two findings that the learned

City Civil Court, Ahmedabad, would not have jurisdiction to entertain the suit and that even otherwise, the suit was barred by limitation, the learned trial Court has rightly dismissed the suit. This Court is in complete agreement with the reasoning and findings of the learned trial Court on both the issues with regard to jurisdiction and the limitation.

6. For the reasons stated above, there is no substance in the present appeal and the same is required to be dismissed and is, accordingly, dismissed. However, there shall be no order as to costs.

[M.R.SHAH, J.]

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